OGC Has Reviewed

21 June 1956

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MEMORANDUM FOR: [redacted]

SUBJECT: Report of the Special Committee on Federal Loyalty-Security Program

An initial reading leaves the following thoughts in connection with the recommendations in Section Three:

a. Recommendation 1. I would have no objection to the Director of Personnel and Information Security having a right to review our methods and procedures generally, but we cannot, I believe, permit him as a matter of right to review individual cases. Similarly, I do not believe we can accept that he could review and possibly alter our classification standards and their application. Aside from the practical problems insofar as our own sources are concerned, this would conflict with the Director's statutory responsibility.

b. Recommendation 2. This could cause us great difficulty but I suppose we could live with it. Often we have to go to people who normally would never receive classified information pertaining to the national security, i.e., certain lower Federal and most state tax officials, and take up with them quite sensitive matters. The present requirement for a clearance is at least some assurance of what potential for compromise may be. Also, I believe under any criteria established by the President or anyone else we would consider all CIA positions sensitive, and I believe this ruling would stand up.

c. Recommendation 3. At present there are Presidential standards and criteria and methods for the classification of information and for its declassification. The application is properly left to the heads of the agencies and I think we would

have to insist that this continue. I would personally favor some central agent to encourage declassification, but the final say must be left with the individual agencies.

d. Recommendation 4. I have no objection at all to the standards suggested.

e. Recommendation 5. We have in the past and are currently applying this principle.

f. Recommendation 6. My personal reaction is highly in favor of this recommendation on the Attorney General's list. This list has been very troublesome to our boards in the past.

g. Recommendation 7. I think this would be excellent, although perhaps needed less by us than by most. Still, such a program couldn't hurt and should help.

h. Recommendations 8 through 17. Since we are exempt from all proposals under the procedural section, I do not suppose we need be concerned with them. However, the main points raised should be commented on.

(1) In connection with the screening board in recommendations 8 and 9, its functions should not apply to us as a matter of right and probably we would not find it feasible to coordinate with them at all.

(2) Recommendation 10 is fine, although continuance of pay of suspended employees would require legislation.

(3) Recommendation 11 on hearing boards appeals to me and is somewhat in line with previous recommendations of this Office.

(4) In connection with recommendation 12, subsection (1), I personally believe it is essential to have a very senior attorney present at any hearing and for all of it. Subsection (3) - employees should have an attorney subject only to certain security provisions. Subsection (4) - we have always had written findings, facts, and conclusions and frequently furnish them to the employee if they are derogatory. I would go further and insist that specific findings be made in the different categories of loyalty, security, and suitability. We are doing this and it appears that the

Supreme Court is of this view as set forth in Cole against Young. Subsection (5) - charged employee is of course given the transcript of his own testimony but cannot always be given any more nor do I think he should have any right to it as that would tend to limit the freedom of testimony by other witnesses.

(5) You will note in recommendation 13 that there would be a limited power of subpoena. Unless you have full subpoena rights some of your most important witnesses will not appear or give statements unless they themselves are protected. This violates the traditional concept of confrontation and cross-examination of witnesses, but I do not quite see how you are going to make it work otherwise unless you could bring these things out for a formal public trial. Normally I feel it is up to the board on advice of counsel to do what it can to bring the derogatory information to the employee's attention for such refutation as he can provide, but even this is not always possible. We have had a case where key evidence of practically unquestioned validity was made available to us only on the strictest condition that we could not inform the employee or his attorney that we were aware of its existence. Subsequent termination of the employee resulted in large part from his flat denial that any such evidence existed, and yet we were unable to confront him with the documents. This may be covered by subsection (3) of recommendation 13 where there is a limitation on cross-examination, although in subsection (3), recommendation 12, there is no such limitation on cross-examination by the attorney.

(6) Recommendation 14. I have no objection to provision for reimbursement of attorney's fees but consideration might be given to the fact that the expenses incurred by the employee in clearing himself are deductible for income tax purposes.

(7) Recommendation 15 is the present law and is essential.

(8) Recommendation 16 is also most necessary and is the policy which has been followed by this Agency. With regard to subsection (4), this reflects our views in relation to Q clearances, but the Atomic Energy Commission takes the opposite viewpoint.

(9) Recommendation 17 is not objectionable so far as I am concerned but is not our current practice. However, as to probationary employees some such system will be utilized.

S/

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